

Message Text

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ORIGIN L-03

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EUR/CE:SKLINGAMAN

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R 022225Z MAR 77

FM SECSTATE WASHDC

TO AMEMBASSY PARIS

AMEMBASSY BONN

AMEMBASSY BERN

AMEMBASSY LONDON

AMEMBASSY THE HAGUE

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E.O. 11652: N/A

TAGS: EINV, FR, GW, NL, SZ, UK

SUBJECT:BILATERAL TREATIES FOR INVESTMENT PROTECTION

1. THE DEPARTMENT IS PRESENTLY EXAMINING THE QUESTION OF
WHETHER THE USG SHOULD ENGAGE IN AN ACTIVE PROGRAM OF
NEGOTIATING AND CONCLUDING BILATERAL INVESTMENT PROTECTION
TREATIES WITH LESS DEVELOPED COUNTRIES. WHILE THE US IS A
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PARTY TO SOME 43 TREATIES OF FRIENDSHIP, COMMERCE AND
NAVIGATION (FCNS) STILL IN FORCE, THE LAST FCN CONCLUDED
BY THE US WAS IN 1968.

2. EACH OF THE ADDRESSEE COUNTRIES HAS AN ONGOING PROGRAM
OF NEGOTIATING BILATERAL INVESTMENT PROTECTION AGREEMENTS
WITH LDCS. (THESE AGREEMENTS ARE GENERALLY NARROWER IN

SCOPE THAN THE STANDARD US FCN, WHICH COVERS SHIPPING, TRADE, TAXATION AND OTHER MATTERS IN ADDITION TO INVESTMENT PROTECTION.) FRANCE HAS AT LEAST 10 BILATERALS, INCLUDING 8 NEGOTIATED IN 1975, THE FRG HAS 47 BILATERALS, THE NETHERLANDS HAS 16, THE UK HAS 7, AND SWITZERLAND HAS SOME 27.

3. IN CONNECTION WITH CONSIDERING THE QUESTION OF BILATERALS IN WASHINGTON, IT WOULD BE MOST USEFUL TO CONSULT WITH THE OFFICE IN EACH GOVERNMENT RESPONSIBLE FOR THE NEGOTIATION OF THE BILATERALS WITH A VIEW TO OBTAINING INFORMATION ON SUCH MATTERS AS:

A) BUREAUCRATIC CONSIDERATIONS, SUCH AS HOW MANY PERSONNEL ARE REQUIRED, HOW MUCH TRAVEL IS INVOLVED.

B) NEGOTIATING MECHANISMS, SUCH AS HOW OFTEN LOCAL EMBASSY HANDLES NEGOTIATIONS, HOW OFTEN A TEAM FROM CAPITAL IS REQUIRED.

C) NEGOTIATING EXPERIENCE, SUCH AS THE RELATIVE DIFFICULTY OR EASE OF NEGOTIATING PARTICULAR PROVISIONS AND WITH WHICH COUNTRIES THE NEGOTIATIONS WENT SMOOTHLY AND WHICH ENTAILED MORE TIME AND PROBLEMS, WHETHER ANY NEGOTIATIONS CAME TO NAUGHT, ETC.

D) THE STANDARD BILATERAL - WHAT STRONG POINTS AND PROBLEMS WITH THE COUNTRY'S STANDARD BILATERAL HAVE BECOME APPARENT THROUGH EXPERIENCE, WHAT RECOMMENDATIONS IN THIS REGARD WOULD BE MADE FOR FORMULATING A NEW MODEL BILATERAL.

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E) EXPERIENCE WITH THE BILATERALS - TO WHAT EXTEND HAVE THE BILATERALS FULFILLED THEIR PURPOSE OF ENCOURAGING AND PROTECTING FOREIGN INVESTMENT IN THE LDCS CONCERNED, HAVE THEY BEEN INVOKED IN INVESTMENT DISPUTES AND WITH WHAT RESULTS.

4. A REPRESENTATIVE OF THE DEPARTMENT'S OFFICE OF THE LEGAL ADVISER, STEPHEN BOND (L/EB) WILL BE ATTENDING AN OECD MEETING IN PARIS FROM MARCH 7-9. WE DESIRE TO UTILIZE THIS TRIP TO HAVE INFORMAL CONSULTATIONS ON THE ABOVE MATTERS.

ACTION REQUESTED - PARIS - PLEASE ENDEAVOR TO SETUP MEETING FOR BOND WITH APPROPRIATE FRENCH OFFICIAL FOR MORNING (PREFERRED) OR AFTERNOON OF THURSDAY, MARCH 10.

ACTION REQUESTED - BONN - PLEASE ENDEAVOR TO SET UP SIMILAR MEETING FOR BOND ON MORNING OR AFTERNOON (PREFERRED) OF FRIDAY, MARCH 11.

ACTION REQUESTED - LONDON - PLEASE ENDEAVOR TO SET UP
SIMILAR MEETING FOR BOND ON MORNING (PREFERRED) OR AFTER-
NOON OF MONDAY, MARCH 14.

5. ABOVE THREE ACTION POSTS, IN MAKING APPOINTMENTS,
SHOULD PROVIDE OFFICIALS WITH SUBSTANCE OF PARAS 1-3 IN
ORDER TO HELP OFFICIALS PREPARE FOR MEETING. PLEASE ALSO
REQUEST OFFICIALS TO GATHER COMPLETE SET OF COPIES OF THEIR
GOVERNMENT'S BILATERAL INVESTMENT PROTECTION TREATIES, IN
ENGLISH TRANSLATION WHERE AVAILABLE, WHICH BOND CAN TAKE
BACK TO WASHINGTON. ACTION POSTS SHOULD ALSO CABLE BOND
BY MARCH 8 EITHER IN WASHINGTON OR PARIS, ADVISING HIM OF
EMBASSY OFFICER HE MAY TELEPHONE FROM PARIS REGARDING
MEETING AND RELATED MATTERS.

6. BOND WILL BE IN GENEVA FOR UNCTAD MEETING FROM MARCH
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28 - APRIL 1 AND WOULD HOPE TO MEET WITH APPROPRIATE
OFFICIALS IN BERN DURING THIS PERIOD AND IN THE HAGUE ON
WAY TO OR FROM GENEVA.

ACTION REQUESTED - BERN AND THE HAGUE - PLEASE CONTACT
APPROPRIATE OFFICIALS, AND COLLECT A COMPLETE SET OF
BILATERALS FROM EACH CAPITAL TO BE POUCHED TO WASHINGTON
BY MARCH 21. SUBSTANCE OF PARAS 1-3 MAY AS DEEMED
APPROPRIATE, BE FURNISHED OFFICIALS, AND OFFICIALS MAY B;
NOTIFIED FO OUR INTENTION TO REQUEST A MEETING SOMETIME
NEAR END OF MARCH.
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